In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 948

MARTIN VON CARSTANJEN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

We respectfully invite the attention of the Court to the following facts which show that the petition was filed out of time: The judgment of the Court of Claims, dismissing this action for failure to prosecute, was entered on December 3, 1956. Petitioner's timely motion to vacate the judgment, filed on December 27, 1956, was denied by the Court of Claims on January 16, 1957. Almost seven years later, on November 26, 1963, petitioner filed a motion for new trial seeking to invoke Rule 54 (now Rule 69(b)) of the Court of Claims; that motion was denied on January 24, 1964.

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Petitioner's latest motion for rehearing, filed on June 27, 1968, and denied by that court on October 18, 1968, is his *thirteenth* motion seeking to revive the suit dismissed in 1956. (Previous motions were filed by petitioner on February 3, 1964; April 13, 1964; May 18, 1964; June 16, 1964, July 14, 1964; December 27, 1964; April 29, 1965; May 17, 1965; January 28, 1966; and April 26, 1968, and were variously denied by the Court of Claims on February 14, 1964; May 15, 1964; June 12, 1964; October 16, 1964; February 19, 1965; June 11, 1965; March 18, 1966; and June 5, 1968.)

Under Rule 68(c) of the Rules of the Court of Claims, a motion for rehearing must be filed within 30 days of entry of judgment. A motion under Rule 69(b) for relief from judgment on account of mistake, newly discovered evidence, and the like must be filed within one year. With the exception of petitioner's December 27, 1956, motion for rehearing, denied on January 16, 1957, all of his motions have been substantially out of time under the Rules of the court below. Since none of these untimely motions was actually entertained on the merits by the Court of Claims, they did not renew the time fixed by 28 U.S.C. 2101(c) for petitioning this Court to review the judgment dismissing petitioner's action. See *Federal Trade Commission* v. *Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1969.

U.S. GOVERNMENT PRINTING OFFICE: 1969